

(b) FSIS will calculate the benefits, travel and operating, overhead, and allowance for bad debt rate components of the basetime rate, using the following formulas:

(1) *Benefits rate.* The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

(2) *Travel and operating rate.* The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

(3) *Overhead rate.* The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which the fees are charged) that are not related to food inspection, by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

(4) *Allowance for bad debt rate.* Previous fiscal year's allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by the previous fiscal year's total hours (regular, overtime, and holiday) worked.

(c) The calendar year's cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

[76 FR 20227, Apr. 12, 2011]

§ 391.3 Overtime and holiday rates.

For each calendar year, FSIS will calculate the overtime and holiday rates, per hour per program employee, provided pursuant to §§307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 of this chapter, using the following formulas:

(a) *Overtime rate.* The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) *Holiday rate.* The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(c) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in §391.2(b), and the cost of living increases and percentage of inflation factors set forth in §391.2(c).

[76 FR 20227, Apr. 12, 2011]

§ 391.4 Laboratory services rate.

(a) For each calendar year, FSIS will calculate the laboratory services rate, per hour per program employee, provided pursuant to §§350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter, using the following formula: The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

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(b) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 391.2(b), and the cost of living increases and percentage of inflation factors set forth in § 391.2(c).

[76 FR 20228, Apr. 12, 2011]

§ 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to § 439.5 of this chapter shall be \$4,500.00 for fiscal year 2011; and \$5,000.00 for fiscal years 2012 and 2013.

(b) Laboratories that request special onsite inspections shall pay FSIS the actual cost of reasonable travel and other expenses necessary to perform the unscheduled or non-routine onsite inspections.

[58 FR 65269, Dec. 13, 1993 as amended at 59 FR 66449, Dec. 27, 1994; 64 FR 19868, Apr. 23, 1999; 71 FR 2143, Jan. 13, 2006; 76 FR 20228, Apr. 12, 2011]

PART 392—PETITIONS FOR RULEMAKING

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AUTHORITY: 5 U.S.C. 553(e), 7 CFR 1.28.

SOURCE: 74 FR 16107, Apr. 9, 2009, unless otherwise noted.

§ 392.1 Scope and purpose.

This part contains provisions governing the submission of petitions for rulemaking to the Food Safety and Inspection Service (FSIS). The provisions in this part apply to all rulemaking petitions submitted to FSIS, except to the extent that other parts or sections of this chapter prescribe procedures for submitting a request to amend a particular regulation.

§ 392.2 Definition of petition.

For purposes of this part, a “petition” is a written request to issue,

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amend, or repeal a regulation administered by FSIS. A request to issue, amend, or repeal a document that interprets a regulation administered by FSIS may also be submitted by petition.

§ 392.3 Required information.

To be considered by FSIS, a petition must contain the following information:

(a) The name, address, telephone number, and e-mail address (if available) of the person who is submitting the petition;

(b) A full statement of the action requested by the petitioner, including the exact wording and citation of the existing regulation, if any, and the proposed regulation or amendment requested;

(c) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant information and views on which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem.

§ 392.4 Supporting documentation.

(a) Information referred to or relied on in support of a petition should be included in full and should not be incorporated by reference. A copy of any article or other source cited in a petition should be submitted with the petition.

(b) Sources of information that are appropriate to use in support of a petition include, but are not limited to:

- (1) professional journal articles,
- (2) research reports,
- (3) official government statistics,
- (4) official government reports,
- (5) industry data, and
- (6) scientific textbooks.

(c) If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal.

(d) If quantitative data are used to support a petition, the presentation of